

FILE ROOM

Before the
Federal Communications Commission
Washington, D.C. 20554

2001 APR 20 A 11: 20

In the Matter of)	
)	
Amendment of Section 73.202(b),)	
FM Table of Allotments,)	MM Docket No. 01-94
FM Broadcast Stations.)	RM-10086
(Corinth, Scotia and Hudson Falls, New York))	
)	
)	

NOTICE OF PROPOSED RULE MAKING

Adopted: April 11, 2001

Released: April 20, 2001

Comments Date: June 11, 2001

Reply Comments Date: June 26, 2001

By the Chief, Allocations Branch:

1. The Allocations Branch has before it a petition for rule making filed by Vox New York, LLC ("petitioner"), licensee of Stations WHTR(FM), Corinth, New York, and WFFG-FM, Hudson Falls, New York, proposing the substitution of Channel 229A for Channel 228A at Corinth, New York, the reallocation of Channel 229A from Corinth to Scotia, New York, and the modification of the license of Station WHTR(FM), accordingly. It also proposes to reallocate Channel 296A from Hudson Falls, New York, to Corinth, and to modify the license for Station WFFG-FM, accordingly.

2. Petitioner seeks to invoke the provisions of Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.¹ It states that each of its proposals falls within the provisions of this rule because the proposal to allocate Channel 229A at Scotia is mutually exclusive with Station WHTR's existing authorization for Channel 228A at Corinth, and its proposal to reallocate Channel 296A from Hudson Falls to Corinth is mutually exclusive with Station WFFG-FM's current allotment of Channel 296A at Hudson Falls. It also notes that the allotment of Channel 229A at Scotia will provide the community with a first local transmission service and retains a first local service at Corinth, it falls within priority (3) of the FM allotment priorities and will serve the public interest.²

3. In support of the proposals, petitioner states that Scotia is a community for allotment purposes. It states that the village of Scotia, with a U.S. Census population of 7,359 persons, is a

¹ See Report and Order in MM Docket No. 88-526 ("Change of Community R&O"), 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990) ("Change of Community MO&O").

² The FM allotment priorities are: (1) First full-time aural service; (2) Second full-time aural service; (3) First local service; and (4) Other public interest matters. [co-equal weight given to priorities (2) and (3).] See Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982).

community and is independent of the larger Albany/ Troy/ Schenectady Urbanized Area of which it is a part. It states that the proposal will provide a city-grade signal to less than 25% of the Urbanized Area. Petitioner also states that the community is independent of the Urbanized Area and provides an analysis of the community using the factors delineated in *Faye and Richard Tuck, Inc.*³ to prove its independence of the Urbanized Area.

4. We believe that the two reallocations together will serve the public interest. We note that we would be reluctant to allow the reallocation of Channel 229A from Corinth to Scotia, standing alone, because it would result in the removal of the sole local transmission service from Corinth.⁴ However, considering the two proposals together, we believe that they will result in a preferential arrangement of allotments because Scotia will gain its first local transmission service and Corinth retains its sole local transmission service.

5. Channel 229A can be reallocated from Corinth to Scotia at a site restriction of 9.9 kilometers (6.2 miles) northwest of the community.⁵ Channel 296A can be reallocated from Hudson Falls to Corinth at petitioner's licensed site 5 kilometers (3.1miles) east of the community.⁶ Petitioner states that there is no change of transmitter site and therefore no gain or loss in area or population. However, our analysis shows that while Corinth is not in the Glen Falls Urbanized Area, the proposal will continue to provide a city-grade signal to 100% of that Urbanized Area. We note that that because the reallocation involves no site change and Station WFFG-FM will be providing the same amount of coverage to the Glen Falls Urbanized Area,⁷ we do not require an analysis of the communities pursuant to the policies enumerated in *Faye and Richard Tuck* because the proposal does not constitute a migration to an urbanized area warranting application of this policy.

6. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Scotia, NY	--	229A
Corinth, NY	228A	296A
Hudson Falls, NY	269A, 296A	269A

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of

³ 3 FCC Rcd 5374, 5378 (1988).

⁴ See *Report and Order in MM Docket 89-87*(Bessemer and Tuscaloosa, Alabama), 5 FCC Rcd 669; app. for rev. granted 11 FCC Rcd 11585 (1996).

⁵ The coordinates for Channel 229A at Scotia are 42-554-27 NL, and 74-00-57 WL.

⁶ The coordinates for Channel 296A at Corinth are 43-14-40 NL and 73-46-18 WL.

⁷ See *Moncks Corner, Kiawah Island and Sampit, South Carolina*, 15 FCC Rcd 8973, 9892 (2000), and *East Los Angeles, Long Beach and Frazier Park, California*, 10 FCC Rcd 2864, 2868 (1995).

the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before June 11, 2001, and reply comments on or before June 26, 2001, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

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1350 Connecticut Avenue, N.W.
Suite 900
Washington, DC 20036-0551
(Counsel to petitioner)

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding, contact Victoria M. McCauley, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on

the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off protection.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. The person filing the comments shall serve comments on the petitioner. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. A certificate of service shall accompany such comments and reply comments. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center, at its headquarters, 445 12th Street, S.W., Washington, D.C.